

# TRANSCRIPT OF RECORD.

---

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

---

No. 615.

JOHN A. GROGAN, COLLECTOR OF INTERNAL REVENUE  
FOR THE FIRST DISTRICT OF MICHIGAN, ET AL.,  
APPLICANTS,

vs.

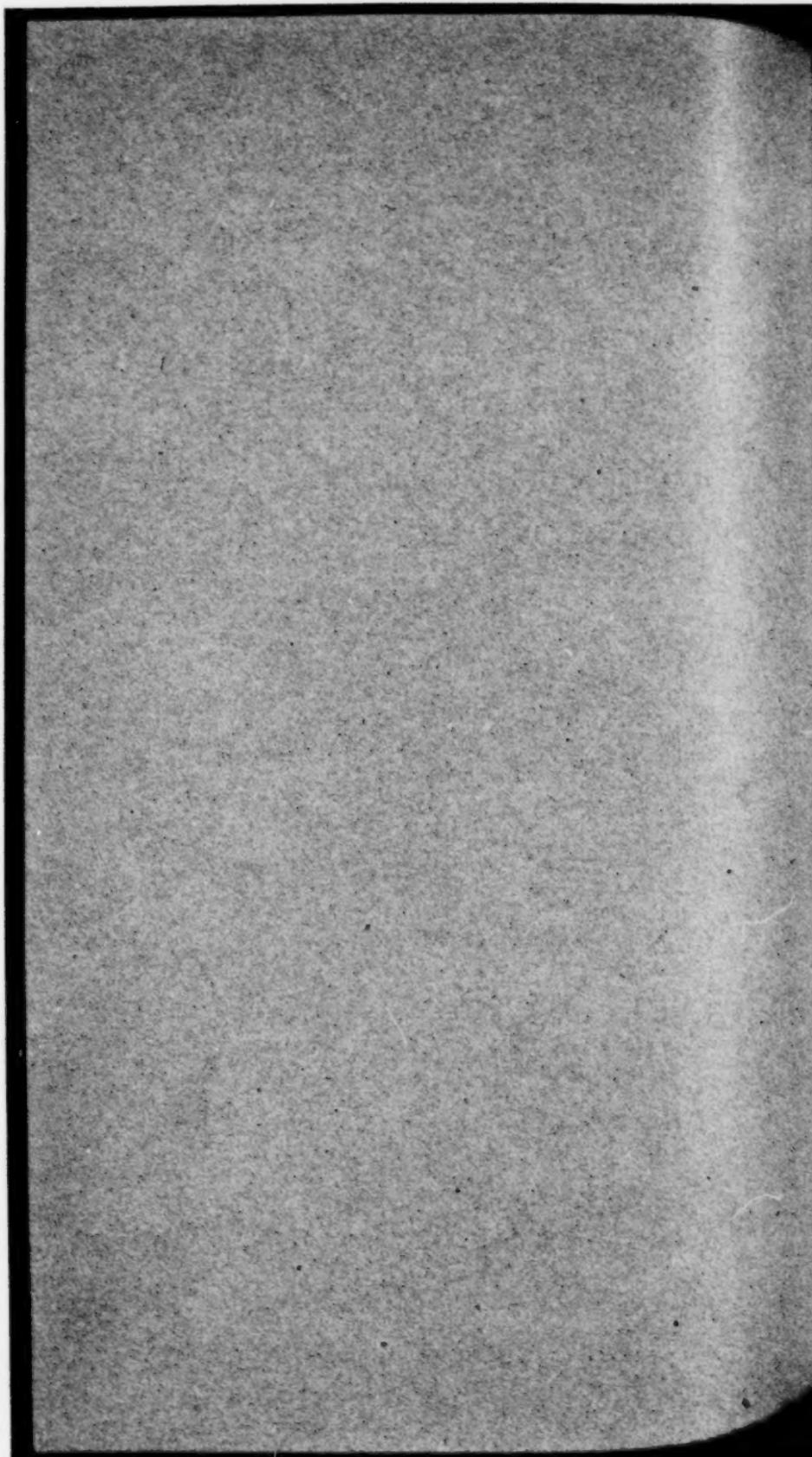
HIRAM WALKER & SONS, LTD.

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF MICHIGAN.

---

FILED NOVEMBER 8, 1921.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 615.

JOHN A. GROGAN, COLLECTOR OF INTERNAL REVENUE  
FOR THE FIRST DISTRICT OF MICHIGAN, ET AL.,  
APPELLANTS,

vs.

HIRAM WALKER & SONS, LTD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF MICHIGAN.

INDEX.

	Original.	Print.
Bill of complaint .....	1	1
Order to show cause and temporary restraining order .....	18	12
Return to order to show cause and motion to dismiss .....	21	14
Order continuing temporary restraining order to August 26, 1921 .....	23	15
Answer to bill of complaint .....	25	16
Stipulation of counsel waiving proofs .....	30	19
Opinion of Tuttle, J .....	31	20
Decree .....	43	26
Assignments of error .....	47	28
Additional assignments of error .....	50	30
Claim of appeal and order allowing same .....	53	31
Citation and service .....	55	32
Designation of record .....	56	33
Order extending time to file and docket printed record on appeal .....	58	34
Clerk's certificate .....	59	34



*Bill of complaint.*

United States of America, in the District Court of the United States  
for the Eastern District of Michigan, Southern Division,  
In Equity.

HIRAM WALKER & SONS, LTD., PLAINTIFF,  
*vs.*  
RICHARD I. LAWSON AND JOHN A. GROGAN, defendants, } No. 411.

*To the District Court of the United States in and for the Eastern  
District of Michigan, Southern Division, in Equity:*

Hiram Walker & Sons, Ltd., a corporation organized and existing under and by virtue of the laws of the Province of Ontario, Dominion of Canada, plaintiff herein, brings this bill of complaint against Richard I. Lawson and John A. Grogan, defendants herein, and complains and says:

## I.

That plaintiff is a corporation organized and doing business under and by virtue of the laws of the Province of Ontario, Dominion of Canada, is a resident of the town of Walkerville, Province of Ontario, Dominion of Canada, and is a subject of the King of Great Britain and Ireland.

## II.

That the defendant herein, Richard I. Lawson, is the United States collector of customs for the Eastern District of Michigan, whose office is located in the city of Detroit, and State of Michigan; that said defendant, Richard I. Lawson, is subject to and performs the orders and directions of the Secretary of the Treasury for the United States, in connection with the seizure of whiskey or intoxicating liquors offered for transshipment in bond as hereinafter more fully set forth; that the defendant, John A. Grogan, is the collector of United States internal revenue for the Eastern District of Michigan, with his office located in the city of Detroit, in the State of Michigan, and is an agent of the United States Internal Revenue Department, for the Eastern District of Michigan, charged with the duty of enforcing the provisions of the so-called "National prohibition act" sometimes hereinafter called the Volstead Act, being an act passed by the Congress of the United States on October 28, 1919, and known in said act as the "National prohibition act"; that said defendants are citizens and residents of the said State and Eastern District of Michigan.

## III.

That plaintiff is, and for to wit, thirty years last past and upwards, has been, at Walkerville, Ontario, a manufacturer and distiller of whiskey, and plaintiff has during all of said time and prior thereto lawfully offered for sale and sold said whiskey in nearly all parts of the world (including the United States up until the time that importation of whiskey into the United States was forbidden by law); that during all of said time and up until the time of the grievances hereinafter complained of, plaintiff has caused said whiskey to be conveyed from Walkerville, Ontario, to a port of the United States and in transit therefrom through the United States to various foreign countries pursuant to the provisions of section 3005 of the Revised Statutes of the United States and the amendments thereto (being section 5690 of the United States Compiled Statutes for the year 1916), and the regulations issued and in force thereunder, and pursuant also to the provisions of Article XXIX of the treaty between the United States and Great Britain, dated May 8, 1871, ratified June 17, 1871, and proclaimed July 4, 1871.

## IV.

That said section 3005 of the Revised Statutes of the United States, as amended (being section 5690 of the United States Compiled Statutes for the year 1916) is as follows:

"All merchandise arriving at any port of the United States destined for any foreign country may be entered at the customhouse and conveyed in transit through the territory of the United States without the payment of duties under such regulations as to examination and transportation as the Secretary of the Treasury may prescribe."

## V.

That the material provisions of said Article XXIX of the treaty hereinbefore mentioned are as follows:

"It is agreed that for the term of years mentioned in Article XXXIII of this treaty, goods, wares, or merchandise arriving at the ports of New York, Boston, and Portland, and any other ports in the United States which have been or may from time to time be specifically designated by the President of the United States and destined for her Britannic Majesty's possessions in North America may be entered at the proper customhouse and conveyed in transit without the payment of duties through the Territories of the United States, under such rules, regulations, and conditions for the protection of the revenue as the Government of the United States may from time to time prescribe; and under like rules, regulations, and conditions, goods, wares, or merchandise may be conveyed in transit without the payment of duties from such possessions through the

territory of the United States for export from the said ports of the United States."

4

## VI.

That during the year 1919 the Congress of the United States passed the act hereinbefore mentioned, known as the "national prohibition act," in order to put into effect the provisions of the eighteenth amendment of the Constitution of the United States, section one of which constitutional amendment is as follows:

"After one year from the ratification of this article, the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into or the exportation thereof from the United States and all Territories subject to the jurisdiction thereof for beverage purposes is hereby prohibited."

## VII.

That title 2, section 3, of said national prohibition act, sometimes called the Volstead Act, reads as follows:

"No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this act, and all the provisions of this act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented."

## VIII.

That since said constitutional amendment and said Volstead Act became in force, plaintiff has ceased importing said whiskey into the United States, but has continued under the regulations of the Secretary of the Treasury to convey said whiskey in transit, in bond, through the United States pursuant to the statutes and the treaty hereinbefore mentioned, said whiskey in all of such cases entering the United States from Canada and destined for foreign countries, and plaintiff has in fact shipped most of its goods, destined for foreign countries, through ports of the United States such as New

5 York, New Orleans, and other ports, said goods usually entering the United States either at the port of Detroit or the port of Buffalo, and being sent to New York or some other port for the foreign shipment. That if plaintiff were compelled to convey its whiskey to Mexico, Central America, and South America otherwise than in transit, in bond, through the United States, the increase in freight and transportation charges, cost of handling, and delay caused in making deliveries would be so great as to greatly impair if not entirely destroy the business of this plaintiff in said foreign countries. That plaintiff now has bona fide orders for sale and delivery of more than 40,000 cases of its whiskey,

aggregating upwards of \$300,000 in value, entered on its books, from residents and dealers in many or all of the countries of South America, Central America, Europe, Asia, and Africa, and it has been and still is its intention to continue (if permitted so to do) its practice of conveying said whiskey in transit, in bond, from time to time, through the United States to such foreign countries in fulfilment of such orders. Plaintiff says in this connection that the loss in whiskey in previous years during transshipment in bond through the United States has been negligible and, according to plaintiff's information, no greater in proportion than the loss occurring in similar transshipments of other merchandise. That in 1920 plaintiff conveyed from Canada in transit, in bond, through the United States, to foreign countries, in the manner aforesaid 86,815 cases of whiskey, aggregating \$700,982.00 in value; that of said amount 286 6-12 cases were lost of a total value of \$2,330.80.

## IX.

That pursuant to the practice and custom of plaintiff as hereinbefore set forth, plaintiff did, on the 14th day of February, 1921, present a shipment of its whiskey, belonging to the plaintiff, and consisting of 25 cases, to the agents of the said United States collector of customs at the port of Detroit, State of Michigan, 6 to be conveyed in transit, in bond, through the United States to the country of Mexico, to be there delivered to plaintiff's customers, residing in said country of Mexico. That plaintiff herein duly complied with all the laws and regulations applicable to the conveyance of said shipments in transit, in bond, through the United States, but without complying or attempting to comply with any of the provisions of the so-called Volstead Act, for the reason that plaintiff claims and has always claimed that none of the provisions of said Volstead Act are applicable to such conveyances in transit, in bond, through the United States, and up until the time of the seizure hereinafter mentioned, neither the said Commissioner of Internal Revenue, his assistants, agents or inspectors nor the said collector of customs, his assistants, or agents had ever interfered with such conveyance, in transit, in bond, through the United States, by plaintiff herein. That plaintiff executed its bond in due form therefor and said shipment was ready in all respects for delivery to and was delivered to a common carrier in said city of Detroit, for conveyance in transit, in bond, through the United States to Mexico.

That said shipment, belonging to plaintiff, was destined for Mexico City, Mexico, and each and every one of the twenty-five cases in said shipment was plainly marked as follows:

"A. T. M.      Port of Detroit.  
Mexico.      In bond for  
Vera Cruz.      New Orleans."

and said cases were numbered from 1 to 25, respectively.

## X.

That shortly thereafter the said defendant, Richard I. Lawson, claiming that he was authorized to and purporting to act in pursuance of the provisions of the said Volstead Act, formally seized said shipment while the cases thereof were still in the possession  
7 of said common carrier for conveyance in transit, in bond,

through the United States to the said country of Mexico, and refused to allow said shipment to proceed to its destination, and claimed the right so to do, on the ground that said shipment was being transported illegally in the United States, contrary to the provisions of the said 18th amendment of the Constitution of the United States and contrary also to the provisions of said Volstead Act. That as complainant is informed and believes, the said defendant, Richard I. Lawson, was soon thereafter informed of a rehearing before the Attorney General of the United States, of the legal questions involved in such seizure and similar seizures and of a reconsideration of its interpretation by said department of the said 18th amendment and of the provisions of the Volstead Act, then claimed by the Treasury Department of the United States to be applicable to such and to forbid such transshipment and similar transshipments; that a rehearing was had and during the course of such rehearing the said shipment in question was retained by said defendant, Richard I. Lawson, in his custody; that said rehearing was finally terminated and the right of the Government to seize in transit shipments of whiskey in bond, as aforesaid, was reaffirmed, by the Treasury Department of the United States, and on, to wit, July 15, 1921, the said Richard I. Lawson again formally seized the said shipment in question, purporting to act in pursuance of the authority granted by the provisions of the Volstead Act and previously recited above in this paragraph.

## XI.

That plaintiff has been furnished by assistants of the defendant, Richard I. Lawson, collector of customs, with a copy of a telegram recently sent said defendant from Washington, by Treasury Department of the United States, reading as follows:

8 "Pursuant Attorney General's opinion June thirtieth affirming previous opinion February 4th, you are directed to refuse transportation and exportation entries for all intoxicating liquors, your district not covered by prohibition permit. This order is to be effective on all such liquors shipped from foreign countries on and after July 15th, 1921, such liquors shipped on or after that date should be seized and forfeited in usual manner under customs regulations.

That the permit referred to is that issuable by the Federal prohibition director for the State of Michigan, acting under the national prohibition act, and regulations of the United States Treasury Department thereunder.

## XII.

The plaintiff has been informed by the assistants of said defendant, Richard I. Lawson, that the directions of said telegram will be obeyed fully and strictly obeyed, and said assistants have threatened and stated that all whiskey offered by plaintiff for shipment in transit in bond in accordance with the previous practice will be seized by said defendant, notwithstanding that such shipment originates in a foreign country (i. e., Canada) for delivery in another foreign country (i. e., Mexico or any country in Central or South America), and plaintiff believes that said defendant and his assistants will carry out his threats and statements.

## XIII.

That the Federal prohibition director for the State of Michigan has stated to the representatives of this plaintiff that in no event would he grant a permit for any transshipment of intoxicating liquors, in bond, despite the fact that such shipments originate in a foreign country and are intended for delivery in another foreign country; that plaintiff believes such statements of said Federal prohibition director.

## XIV.

That on, to wit, the 19th day of July, 1921, this plaintiff  
9 notified the so-called bond clerk and assistant of said Richard

I. Lawson, collector of customs, defendant herein, that this plaintiff desired to tranship in bond from Walkerville, Ontario, in the Dominion of Canada, through the port of Detroit, and overland through the United States to the port of New Orleans, in the United States of America, and from New Orleans by water to Puerta (i. e., port) Barrios, in the country of Guatemala, Central America, 600 cases of whiskey belonging to plaintiff, of a value of upwards of \$4,500.00, exclusive of any interest, taxes, and transportation charges, for delivery in the last-named place in Guatemala to Dalgleisch Hermanos, a bona fide and regular agent of this plaintiff. That the said shipment was prepared and ready for transportation in the city of Walkerville, Ontario, and this plaintiff was about to bring over the said 600 cases when this plaintiff was informed by the assistant of said Richard I. Lawson, defendant herein, that the said merchandise would be seized and forfeited by the assistant of said Richard I. Lawson, collector of customs, under the orders of the U. S. Treasury Department, and said defendant as soon as the said whiskey reached the city of Detroit, unless the said plaintiff would obtain a permit from the Federal prohibition director of the State of Michigan, acting under the aforesaid Volstead Act, permitting the aforesaid transshipment. That this plaintiff, on said day last mentioned, interviewed the said Federal prohibition director for the

State of Michigan, and the latter stated that, acting under the directions of the Treasury Department of the United States, he would decline to give a permit for said transshipment. That this petitioned believed the statements made by the assistant of the said defendant, Richard I. Lawson, collector of customs, and believes that the aforesaid merchandise would be seized if brought into Detroit.

## XV.

That plaintiff has been informed and is apprehensive that the defendant, John A. Grogan, acting as an agent of the 10 Commissioner of Internal Revenue, under the interpretation made by the United States Secretary of the Treasury of section 2 and other sections of the said prohibition act, will institute criminal proceedings against this plaintiff and against its property offered for transshipment in bond, from Canada to Mexico, or Central or South America, through portions of the United States and against employees and agents of this plaintiff; engaged in transshipment of whiskey in bond shipped from Canada and transshipped from the port of Detroit to other points in the United States, for transshipment there and for ultimate delivery in foreign countries, and that the said defendant will thereby subject this plaintiff, its agents and employees, and property to various fines, penalties, and forfeitures, set forth in the national prohibition act. Plaintiff under advice of counsel avers that said 18th amendment and Volstead Act, legally and correctly construed, does not hinder, forbid, or prevent transshipment of whiskey in bond through the United States from and to a foreign country.

## XVI.

Plaintiff further shows that said eighteenth amendment relates only to intoxicating liquors "for beverage purposes" as therein set forth; that there is no provision either in said eighteenth amendment to the United States Constitution or in said Volstead Act declaring or making conveyance of whiskey in transit, in bond, as aforesaid, through the United States, entering from and destined to foreign countries illegal, and such conveyance is not forbidden either by the said eighteenth amendment or said Volstead Act, but is expressly authorized by said section 5690 of the United States Compiled Statutes of 1916 and the treaty of May 8, 1871, between the United States and Great Britain hereinbefore mentioned, that if the said Voistead Act be construed so as to forbid or prevent such conveyance in transit in bond as aforesaid, then such construction would make said act unconstitutional.

## XVII.

Plaintiff further shows that the practice of transit in bond of liquors has been exercised for a great many years past. That

although the constitutional amendment and the Volstead Act went into effect on or about the month of January, 1920, the same practice continued without intermission or interference until the seizures hereinbefore complained of; and that this privilege has never been abused or used as a cover for smuggling liquor into the United States, but on the contrary, Mr. Geo. W. Ashworth, the Chief of the Customs Division of the Treasury Department, having charge of these matters for the Treasury for years past, expressly stated on the said rehearing before the Attorney General that there had never been any complaint of any such violations and none such had occurred so far as known. Plaintiff further says on information and belief that no claim has ever been made by the prohibition enforcement officers of the Government that there have been any such violations or that the further exercise of the privilege will result in introducing liquors into the United States in violation of the eighteenth amendment or for beverage purposes. It further shows that said practice of shipping in bond was continued under the constitutional amendment and the Volstead Act for nearly a year and a half and down to the present time, only after the matter was given due consideration by the legal departments of the four different branches of the Government, namely, the attorneys for prohibition unit of the Internal Revenue Department of the Treasury; the attorneys for Customs Division of the Treasury; the counsel for the United States Railroad Administration; and finally the General Solicitor for the Treasury Department, Judge Becker, all of whom rendered their opinions that the practice was not in violation of either the eighteenth amendment or the Volstead Act.

### XVIII.

Plaintiff further shows that unless Richard I. Lawson, defendant herein, is restrained he will dispose of the contents of said shipment hereinbefore mentioned, ostensibly in accordance with the provisions of said Volstead Act, and plaintiff will be thereby deprived of its property without due process of law, and will be greatly damaged and irreparably injured. That the actions and doings of said defendants committed, threatened, and apprehended as hereinbefore set forth as contrary to and in violation of the Constitution and statutes of the United States hereinbefore mentioned, and are also contrary to and in violation of the provisions of the treaty of May 8, 1871, between the United States and Great Britain, hereinbefore mentioned, and plaintiff has no adequate remedy at law in the premises.

### XIX.

Plaintiff alleges that if it should be deprived of the right to tranship liquor through the ports of the United States, pursuant to the terms of section 3005 of the Revised Statutes of the United States,

as amended (being section 5690 of the United States Compiled Statutes of 1910), or if the terms and provisions of the so-called national prohibition act, as construed by the Secretary of the Treasury, should be held to repeal section 3005 of the Revised Statutes of the United States, as amended, a large part of the valuable business of the plaintiff will be destroyed and future profits therefrom greatly diminished, if not made impossible. That the injury and damage to the said plaintiff resulting from said action would be incapable of measuring and adjudication in an action at law and such seizures would compel the plaintiff to cease the transaction of business with Mexico and many parts of Central and South America to its irreparable injury.

13

## XX.

This is a suit of civil nature, arising under the Constitution, laws, and treaties of the United States. The matter in controversy exceeds the sum of three thousand dollars in full, exclusive of interest and costs.

## XXI.

Plaintiff shows that irreparable damage will be done it unless a temporary restraining order shall be granted forthwith, without notice to the defendants. That at the present time plaintiff has bona fide orders for shipment of more than thirty thousand cases of its whiskey, aggregating upwards of \$250,000.00 in value, for immediate delivery to customers in the following places and countries, viz:

Dutch West Indies, Dutch Guinea, Haiti, Cuba (Santiago and Guantanamo), Mexico, Guatemala, Spanish Honduras, Salvador, Nicaragua, Costa Rica, Republic Panama, Colombia, Venezuela, Ecuador, Peru.

That if plaintiff be barred and prevented from filling the aforesaid orders to its customers, in the foregoing countries, by conveyance in transit in bond through the United States in the manner hereinbefore practised by plaintiff, and as above set forth, it will be necessary for plaintiff to fill said orders by shipping its merchandise from Walkerville, Ontario, to Montreal, Canada, by railroad, and to tranship the same at Montreal for conveyance by steamer to England, and again to tranship the said merchandise in England for conveyance by steamer from England to the respective customers in the above-named countries; that even if plaintiff be successful in securing promptly space on ships in England for transportation of said merchandise from England to the countries aforesaid, the expenses of

14 railroad transportation from Walkerville to Montreal, boat transportation thence to England, and boat transportation

from England to the aforesaid countries, will be so great as to destroy the business of plaintiff in said countries, in competition with distillers already located in Scotland and England; and selling their

own whiskey in the aforesaid countries: that said English and Scotch distillers would have the advantage of a freight rate cheaper than the freight rate afforded this plaintiff, because of the expense to plaintiff of transportation from Walkerville, Ontario, to England, and the expense of transportation to Montreal and in England. Plaintiff says further that the delay in delivery by shipment through the route last mentioned would be so great that months would elapse before the merchandise reached plaintiff's customers in the respective countries mentioned above, and that as a result thereof the aforesaid customers would refuse to await the delivery of merchandise from plaintiff and would cancel their orders for plaintiff's products and would buy the whiskey of the English and Scotch distillers, who compete with plaintiff in the aforesaid countries. Plaintiff says further that there is also considerable doubt as to the ability of plaintiff's representatives in England to secure cargo space for reasonably prompt shipments of its merchandise from England to the countries aforesaid, and that unless cargo space were obtained readily, plaintiff would also have to bear the burden of heavy storage charges and handling charges while its merchandise was obliged to remain in England awaiting cargo space. Plaintiff says that if it should once lose its business in the countries aforesaid, it will be very expensive and difficult if not impossible to recover the same. Plaintiff says that in view of its peculiar situation as above outlined, irreparable damage will be done plaintiff if plaintiff be required to serve notice to the defendants and await a hearing hereon before plaintiff can secure relief.

15 Plaintiff therefore prays:

(a) That the said defendants may true answer make but not under oath (answer under oath being hereby expressly waived) to the foregoing bill of complaint and to each and every paragraph thereof.

(b) That the said defendants, Richard L. Lawson and John A. Grogan, their respective agents, servants, and employees, and all claiming or holding through or under them, or any or either of them, be temporarily and permanently restrained from further interfering with the possession of the shipment of whiskey hereinbefore mentioned in this bill of complaint; and from disposing of said shipment and the contents thereof, under the provisions of said Volstead Act.

(c) That defendants herein, their respective agents, servants, and employees, and all claiming or holding through or under them, or any or either of them, be compelled to deliver and return said shipment of whiskey to plaintiff herein or its duly authorized carrier, for such disposition thereof as may be lawful and not contrary to the rights of plaintiff in said whiskey.

(d) That the defendants, Richard L. Lawson and John A. Grogan, their respective agents, servants, employees and subordinates and

each and every one of them, and all other officials and employees of the Treasury Department of the United States and each and every one of them, be enjoined and restrained temporarily and permanently from in any manner enforcing or attempting to enforce or causing to be enforced against the plaintiff, its officers, servants, and employees, or any of them, and against the whiskey of plaintiff, any of the pains, penalties, or forfeiture provided in and by the national prohibition act, or the Regulations of the Secretary of the Treasury, supplemental thereto, on the grounds of or under the claims

that transshipping whiskey in bond, transported through the  
16 United States, shipped from and destined to foreign coun-

tries, under the provisions of section 3005 of the Revised Statutes of the United States and the amendments thereto, is contrary to law, and that said defendants, John A. Grogan, his agents, servants, employees and subordinates, and each and every one of them, and all other officials and employees of the Treasury Department of the United States and each and every one of them, be enjoined and restrained from arresting or prosecuting the plaintiff, its officers, agents, servants, or employees, or any of them, for or on account of any alleged violation by them or any of them, of the terms of the national prohibition act or the Regulations of the Secretary of the Treasury promulgated thereunder on the grounds of or under the claims that transhipment of whiskey in bond transported through the United States, shipped from and destined to foreign countries, under the provisions of section 3005 of the Revised Statutes of the United States, and the amendments thereto, is contrary to law;

(e) That the said defendants, Richard I. Lawson and John A. Grogan, their respective agents, servants, employees and subordinates and each and every one of them, and all other officials and employees of the Treasury Department of the United States, and each and every one of them, be enjoined and restrained temporarily and permanently from forfeiting, seizing, stopping, hindering or molesting shipments of whiskey belonging to plaintiff, shipped from Walkerville, Ontario, in the Dominion of Canada, and entering any port in the United States for conveyance thence in transit in bond through any port of the United States to any other port therein for transhipment at the latter port to any foreign country where the delivery of said whiskey is intended to be made; as provided in and according to section 3005 of the Revised Statutes of the United States, as amended;

(f) That plaintiff herein may have such other and further relief in the premises as the court may deem proper.

HIRAM WALKER & SONS LTD.,  
By (Sgd) HOBART A. SPRINGLE,  
*Its Secretary.*

17 (Sgd.)      **LUCKING, HELFMAN, LUCKING & HANLAN,**  
*Attorneys for Plaintiff, Business address,*  
*1502 Ford Bldg., Detroit, Mich.*

**STATE OF MICHIGAN, County of Wayne, ss:**

Hobart A. Springle, being duly sworn, deposes and says that he is the secretary of Hiram Walker & Sons, Ltd., the plaintiff named in the foregoing bill of complaint; that he signed said bill of complaint on behalf of said plaintiff and is duly authorized so to do; that he has read said bill of complaint and knows the contents thereof and that the same is true and of his knowledge except as to such matters as are therein stated to be on information and belief, and as to such matters he believes it to be true.

(Sgd.)      **HOBART A. SPRINGLE.**

Subscribed and sworn to before me this 2nd day of August, A. D. 1921;

(Sgd.)      **FRANK THAYER NELSON,**  
*Notary Public, Wayne County, Michigan.*

My commission expires March 23, 1924.

Filed August 3rd, 1921.

**ELMER W. VOORHEIS, Clerk.**  
 By **CARRIE DAVISON, Deputy Clerk.**

18      **United States of America, in the District Court of the United States for the eastern district of Michigan, Southern Division.**

**In Equity.**

**HIRAM WALKER & SONS, INC., PLAINTIFF,**  
*vs.*

**RICHARD L. LAWSON, COLLECTOR OF CUSTOMS**  
 for the port of Detroit, and John A. Grogan, collector of internal revenue, in said city of Detroit, Michigan, defendants.

**No. 411.**

*Order to show cause and temporary restraining order.*

On reading the bill of complaint filed in the above entitled cause, let the defendants herein show cause before this court at a term thereof, for a hearing of motions to be held at the Post-Office Building, in the city of Detroit, Michigan, on the 15th day of August, 1921, at nine o'clock in the forenoon or as soon thereafter as counsel can be heard.

(1) Why an order should not be made and entered, restraining the defendants, their agents, servants, and subordinates from forfeiting, seizing, stopping, hindering or molesting shipments of whisky belonging to plaintiff shipped from Walkerville, Ontario, in the Dominion of Canada, and entering any port in the United States for conveyance thence in transit in bond through any port of the United

States to any other port therein for transshipment at the latter port to any foreign country where the delivery of said whiskey is intended to be made as provided in and according to section 3005 of the Revised Statutes of the United States, as amended, and

19 (2) Why an order should not be made restraining the defendants, their agents, servants, and subordinates from in any manner enforcing or attempting to enforce or causing to be enforced against the plaintiff, its officers, servants or employees, or any of them, and against the whiskey of plaintiff any of the pains, penalties or forfeitures provided in and by the national prohibition act or the regulations of the Secretary of the Treasury supplemental thereto, on the grounds of or under the claims that transshipping whiskey in bond, transported through the United States, shipped from and destined to foreign countries, under the provisions of section 3005 of the Revised Statutes of the United States and the amendments thereto, is contrary to law; and

(3) Why an order should not be made restraining the said defendant, John A. Grogan, his agents, servants, employees and subordinates, and each and every one of them, from arresting or prosecuting the plaintiff, its officers, servants, agents, or employees or any of them, for or on account of any alleged violation by them or any of them, of the terms of the national prohibition act, or the regulations of the Secretary of the Treasury, promulgated thereunder, on the grounds of or under the claims that transshipping whiskey in bond transported through the United States, shipped from and destined to foreign countries, under the provisions of section 3005 of the Revised Statutes of the United States, and the amendments thereto, is contrary to law; and

(4) Why the plaintiff should not have such other and further relief as may be just.

(5) Sufficient cause appearing, service of a copy of this order on the defendants on or before the 8th day of August, 1921, shall be sufficient service, and it appearing to the court from the verified bill

20 of complaint filed in said cause that immediate and irreparable injury, loss and damage will result to the plaintiff in said cause before notice can be served and a hearing had thereon by reason of the fact that plaintiff has numerous bona fide orders for shipment of its whiskey for immediate delivery to its customers in the places and countries hereinafter mentioned, and unless the plaintiff is permitted to fill said orders in the usual course of business by transit in bond through the United States, plaintiff will probably lose its business in said countries and therefore the court deems it advisable to issue this temporary restraining order and grant the same without notice, now, therefore, on motion of Lucking, Helfman, Lucking & Hanlon, attorneys for Hiram Walker & Sons, Ltd., the plaintiff in said cause, it is hereby

Ordered, that the defendants Richard I. Lawson and John A. Grogan, their agents, servants, and subordinates, are hereby re-

strained from seizing, disturbing, removing or in any way interfering with any shipments of liquor made or to be made by said plaintiff from Walkerville, Ontario, through the United States by transit in bond, pursuant to the provisions of section 3005 of the Revised Statutes of the United States and the amendments thereto, to any of the following places and countries, to wit: Dutch West Indies, Dutch Guiana, Haiti, Cuba, Mexico, Guatemala, Spanish Honduras, Salvador, Nicaragua, Costa Rica, Republic of Panama, Colombia, Venezuela, Ecuador, or Peru, and it is further

Ordered, that this temporary restraining order shall expire ten days after the entry thereof unless within said time it shall be extended for a like period for good cause shown, pursuant to the statute in such case made and provided.

Dated August 6, 1921.

(Sgd.) ARTHUR J. TUTTLE,  
*United States District Judge.*

Filed August 6th, 1921.

ELMER W. VOORHEIS, *Clerk.*  
By CARRIE DAVISON, *Deputy Clerk.*

21 United States of America, District Court of the United States  
for the Eastern District of Michigan, Southern Division.

In Equity.

HIRAM WALKER & SONS, LTD., PLAINTIFF, }  
vs. }  
RICHARD L. LAWSON, COLLECTOR OF CUS }  
toms, and John A. Grogan, collector of }  
internal revenue, defendants. } No. 411.

*Return to order to show cause and motion to dismiss.*

The above defendants, by John E. Kinnane, United States attorney for the Eastern District of Michigan, in answer to the order heretofore made in the above-entitled cause requiring them to show cause why they should not be enjoined and restrained from interfering with the transportation and importation of whiskey from Ontario into the United States, and in transit to various foreign countries, move to dismiss the bill of complaint filed in said cause for the following reasons:

- (1) That it appears by the plaintiff's said bill of complaint that it is not entitled to the relief prayed.
- (2) There is no equity in said bill.
- (3) That the national prohibition act and regulations thereunder forbids such transshipment of whiskey.
- (4) That the treaty recited in said bill of complaint is abrogated by the act of Congress known as the national prohibition act, and the eighteenth amendment to the Constitution of the United States.

Wherefore the said defendants pray that the bill of complaint  
 may be dismissed, and pray judgment of this honor-  
 able court whether they shall be compelled to make any  
 answer to said bill.

JOHN E. KINNANE,

*United States Attorney for the Eastern District of Michigan.*

Filed August 18, 1921.

ELMER W. VOORHEIS, *Clerk.*  
 By CARRIE DAVISON, *Deputy Clerk.*

23     *Order continuing temporary restraining order to August 26,  
 1921.*

United States of America, in the District Court of the United States  
 for the Eastern District of Michigan, Southern Division.

In Equity.

HIRAM WALKER & SONS, LTD., PLAINTIFF,  
 vs.

RICHARD L. LAWSON, COLLECTOR OF CUSTOMS FOR THE PORT  
 of Detroit, and John A. Grogan, collector of internal  
 revenue, in said city of Detroit, Michigan, defendant.     } NO. 411.

It appearing to the court from the affidavit of Hobart A. Springle  
 in said cause, that the plaintiff in said cause is in communication  
 with the Chief of the Customs Division of the Treasury Department,  
 at Washington, D. C., regarding the securing of proper in-  
 structions to collectors of customs at the ports of exit from the United  
 States, so that plaintiff may safely make shipments in bond through  
 the United States pursuant to the terms of the restraining order  
 heretofore granted herein under date of August 6, 1921, and that  
 no final reply has yet been received from said Chief of Customs  
 Division, and that irreparable injury will result to said plaintiff  
 unless said restraining order is extended; now, therefore, on motion  
 of Lucking, Helfman, Lucking & Hanlon, attorneys for the plain-  
 tiff in said cause, it is hereby

24     Ordered, that the temporary restraining order heretofore  
 issued in said cause under date of August 6, 1921, be and the  
 same is hereby extended and continued in full force and effect until  
 and including August 26, 1921.

Dated August 16, 1921.

(Sgd.)     ARTHUR J. TUTTLE,  
*United States District Judge.*

Filed August 16, 1921.

ELMER W. VOORHEIS, *Clerk.*  
 By CARRIE DAVISON, *Deputy Clerk.*

25      United States of America, in the District Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

HIRAM WALKER & SONS, LTD., PLAINTIFF,  
vs.

RICHARD I. LAWSON, COLLECTOR OF CUSTOMS  
for the port of Detroit, and John A. Grogan, collector of internal revenue in  
said city of Detroit, Michigan, defendants.

No. 411.

*Answer of defendants to plaintiff's bill of complaint.*

The answer of Richard I. Lawson, collector of customs for the port of Detroit, and John A. Grogan, collector of internal revenue for the Eastern District of Michigan, the above-named defendants to the bill of complaint filed in the above-entitled cause, respectfully shows:

- (1) Defendants admit the allegations contained in paragraph 1 of said bill of complaint.
- (2) Defendants admit the allegations contained in paragraph 2 of said bill of complaint.
- (3) Defendants admit the allegations contained in paragraph 3 of said bill of complaint, except as to the matters of law therein stated.
- (4) Defendants admit the allegations contained in paragraph 4 of said bill of complaint.
- (5) Defendants admit that article 29 of the treaty of 1871 is correctly stated in paragraph 5 of said bill of complaint.

26      (6) Defendants admit that the 18th amendment to the Constitution of the United States is correctly recited in paragraph 6 of said bill of complaint.

- (7) Defendants admit that section 3 of Title II of the national prohibition act is correctly recited in paragraph 7 of said bill.
- (8) Regarding the allegation contained in paragraph 8 of said bill of complaint that since said constitutional amendment and the national prohibition act became in force that plaintiff has ceased importing whiskey into the United States, but has continued under the regulations of the Secretary of the Treasury to convey said whiskey in transit, in bond, through the United States, pursuant to the statutes and treaty above mentioned, these defendants have no knowledge sufficient to either admit or deny the same, but aver that said allegation is immaterial to the determination of this cause.

Regarding the other allegations contained in said paragraph 8 as to the volume, character of business, and losses during transshipments in previous years, these defendants have no knowledge sufficient to admit or deny the same, but admit that the plaintiff is en-

gaged in said business and has been for many years, and further, defendants aver that said allegations are immaterial to a determination of this cause.

(9) Defendants admit the allegations contained in paragraph 9 of said bill of complaint.

(10) Defendants admit the allegations contained in paragraph 10 of said bill of complaint.

(11) Defendants admit the allegations contained in paragraph 11 of said bill of complaint.

27 (12) Defendants admit the allegations contained in paragraph 12 of said bill of complaint.

(13) Defendants admit the allegations contained in paragraph 13 of said bill of complaint.

(14) Defendants admit the allegations contained in paragraph 14 of said bill of complaint.

(15) The defendants admit that under the provisions of the national prohibition act and regulations duly made to carry the same into effect, and under the interpretation made by the Secretary of the Treasury of said act, that criminal proceedings may be instituted against the plaintiff and its property offered for transshipment, in bond, from Canada to Mexico and other foreign countries, through portions of the United States, as alleged in paragraph 15 of said bill, but deny the allegation therein contained as to the legal effect of the 18th amendment to the Constitution of the United States and of the national prohibition act.

(16) The defendants deny the conclusions of law and interpretation of the national prohibition act and the 18th amendment to the Constitution of the United States, and the application of the Revised Statutes of the United States for the transshipment of whiskey, in bond, as set forth in paragraph 16 of said bill of complaint.

(17) Defendants admit the allegation contained in paragraph 17 of said bill that the practice of transshipment in bond, of liquors from Canada to other foreign countries through the United States has been exercised for a great many years past and that since the adoption of the national prohibition act the same practice has continued without interference until the seizures mentioned in said

28 bill of complaint, but as to whether said privilege has been used as a cover for smuggling liquor into the United States

by plaintiff, these defendants say that plaintiffs have not used said practice as a cover for smuggling liquor into this country; but regarding the further allegation that plaintiff is informed and believes that no claim has ever been made by officers of the United States Government that there have been any such violations or that the further exercise of the privilege will result in introducing liquors into the United States in violation of law, defendants aver that the continued shipment of liquor through the United States, from Canada to foreign countries will result in violations of the national

prohibition act, and a portion of said liquor will remain in the United States in violation of law.

Regarding the allegations in said paragraph that said practice was sanctioned by the legal department of four different branches of the Government, defendants have no knowledge sufficient to admit or deny the same, but aver that said practice and said interpretation are immaterial to the determination of this cause.

(18) Defendants admit the allegations contained in paragraph 18 of said bill except so much thereof as charges that the acts of the defendants will be in violation of the Constitution and laws of the United States, and of the treaty hereinbefore referred to.

(19) Defendants admit the allegations contained in paragraph 19 of said bill of complaint.

(20) Defendants admit the allegations contained in paragraph 20 of said bill of complaint.

(21) Regarding the allegations of damage in paragraph 21, defendants have no knowledge sufficient to admit or deny the 29 same, but do know that the plaintiff is engaged in the business of manufacturing and selling whiskey and has been for many years, and that shipments are made to foreign countries, but regarding the delays and obstacles in the way of prompt shipments, as set forth in said paragraph, the defendants are not advised, and aver that the same are immaterial to a determination of this cause.

The defendants, further answering said bill of complaint, aver that if shipments of whiskey are permitted to be transported from Canada to other foreign countries, through the United States, by way of Detroit and the Eastern District of Michigan, as prayed by the plaintiff, that said cars may be entered by violators of the law and said whiskey removed while in the United States; that the cars in which whiskey is shipped are not proof against thieves and that large quantities of merchandise are continually stolen from interstate shipments of all kinds of merchandise, and that the cars containing said whiskey may be easily entered by the breaking of the seals and the contents removed en route through the United States, except where detectives accompany said shipments, and even in such cases losses have been and will be sustained.

For the above reasons and the other reasons contained in defendants' motion to dismiss heretofore filed, defendants say that the relief prayed for should be denied and the bill of complaint dismissed.

RICHARD L. LAWSON,  
*Collector of Customs.*

JOHN A. GROGAN,  
*Collector of Internal Revenue.*

By CLARENCE NEELY,  
*Chief Office Deputy Collector.*

JOHN E. KINNANE,  
*U. S. Attorney.*

F. L. EATON,  
*Assistant U. S. Attorney for defendants.*

*Stipulation of counsel waiving proofs.*

Filed August 18, 1921.

ELMER W. VOORHEIS, *Clerk,*  
CARRIE DAVISON, *Deputy Clerk.*

United States of America, in the District Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

HIRAM WALKER & SONS, LTD., PLAINTIFF,  
*v.*RICHARD I. LAWSON, COLLECTOR OF CUSTOMS FOR  
the port of Detroit, and John A. Grogan,  
collector of internal revenue in said city of  
Detroit, Michigan, defendants.

No. 411.

It is hereby stipulated by and between the parties to the above-entitled cause, by their respective attorneys, that inasmuch as the issues presented by the bill of complaint and answer filed thereto are questions of law and the facts are before the court as set forth in the bill of complaint, answer, and this stipulation, that it is unnecessary to take proofs in said cause, the aforesaid questions of law being controlling and decisive.

It is further stipulated and agreed that the case proceed to a final decree without taking of proofs and that the taking of proofs herein be dispensed with.

It is further stipulated that the whiskey in controversy was and is intended for consumption as beverage whiskey but the plaintiff does not admit the materiality of the manner of the use thereof.

LUCKING, HELFMAN, LUCKING & HANLON,  
*Attorneys for plaintiff.*JOHN E. KINNANE,  
*United States Attorney for the Eastern  
District of Michigan, for defendants.*

August 17, 1921.

F. L. EATON, *Assistant U. S. Attorney.*

Filed August 18, 1921.

ELMER W. VOORHEIS, *Clerk.*  
By CARRIE DAVISON, *Deputy.*

31 In the United States District Court of America, Eastern District of Michigan, Southern Division, in Equity.

HIRAM WALKER & SONS, LTD., PLAINTIFF,  
*v.*

RICHARD I. LAWSON &amp; JOHN A. GROGAN, DEFENDANTS.

No. 411.

Messrs. Lucking, Helfman, Lucking & Hanlon, of Detroit, attorneys for plaintiff.

Hon. John E. Kinnane, U. S. district attorney, and Fred. L. Eaton, asst. district attorney.

*Opinion.*

TURTLE, District Judge: This is a bill for an injunction to restrain the defendants, one of whom is the United States collector of customs, and the other the collector of United States internal revenue, for this district, from interfering with shipments, by the plaintiff, of intoxicating liquor from Canada to Mexico and other foreign countries, through the United States. The question involved is whether such shipments are unlawful under the national prohibition act.

The material facts alleged in the bill of complaint are as follows: Plaintiff is a corporation organized and doing business under the laws of the Province of Ontario, Canada, is a resident of 32 Walkerville in said Province, and is a subject of Great Britain.

For more than thirty years it has been manufacturing and distilling in Walkerville whiskey which it has been selling and shipping to various foreign countries. During these years, plaintiff has conveyed its whiskey from Walkerville to a port of the United States and in transit therefrom through the United States to other foreign countries as authorized by a certain treaty between the United States and Great Britain, and pursuant to a certain statute of the United States. The treaty in question was proclaimed July 4th, 1871, and contains the following provision:

"It is agreed that, for the term of years mentioned in Article XXXIII of this treaty, goods, wares or merchandise arriving at the ports of New York, Boston, and Portland and any other ports in the United States which have been or may, from time to time, be specifically designated by the President of the United States and destined for her Britannic Majesty's possessions in North America, may be entered at the proper customhouse and conveyed in transit without the payment of duties through the territory of the United States, under such rules, regulations and conditions for the protection of the revenue as the Government of the United States may from time to time prescribe; and under like rules, regulations and conditions, goods, wares or merchandise may be conveyed in transit without the payment of duties, from such possessions through the territory of the United States for export from the said ports of the United States."

The statute referred to is section 3005 of the United States Revised Statutes, which provides as follows:

"All merchandise arriving at any port of the United States destined for any foreign country, may be entered at the customhouse, and conveyed, in transit, through the territory of the United States, without the payment of duties, under such regulations as to examination and transportation as the Secretary of the Treasury may prescribe."

After the time of the taking of effect of the 18th amendment and of the national prohibition act, plaintiff ceased to import whiskey into the United States, but has continued, under the regulations

33 of the United States Treasury Department, to convey whiskey in transit, in bond, through the United States pursuant to said treaty and statute, such whiskey entering the United States from Canada and being destined for foreign countries. If plaintiff were compelled to ship its whiskey to Mexico, Central America, and South America otherwise than in bond, through the United States, the increase in freight and transportation charges, cost of handling and delays caused in making deliveries would be so great as to largely impair, if not entirely destroy, the business of the plaintiff in such foreign countries. Shortly before the filing of its bill of complaint herein, plaintiff presented a shipment of its whiskey to the agent of the defendant collector of customs at the port of Detroit in this district, to be conveyed, in transit, in bond, through the United States to the country of Mexico, to be there delivered to plaintiff's customers residing in said country. It duly complied with all applicable laws (except the national prohibition act, if that be applicable) and regulations. Up to this time neither defendant had interfered with any such shipment. Plaintiff executed its bond in due form and its said shipment was delivered to a common carrier in Detroit for conveyance in transit, in bond, through the United States to Mexico. Shortly thereafter the defendant collector, claiming to act pursuant to the provisions of the national prohibition act, seized said shipment while it was still in the possession of said common carrier for said through shipment, and refused to allow it to proceed, on the ground that it was being transported contrary to the terms of the eighteenth amendment and of the national prohibition act. Plaintiff is unable to obtain a permit for said or any similar shipment of intoxicating liquors in bond from Canada through the United States to a foreign 34 country and the defendants will interfere with, and prevent, any such shipment unless restrained by injunction.

By appropriate averments, the bill alleges that irreparable injury will be sustained by it unless the injunction prayed be granted. The bill alleges that the suit arises under the Constitution and laws and treaties of the United States, and that the matter in controversy exceeds the jurisdictional sum of \$3,000, exclusive of interest and costs. The cause is now before the court on the bill, a motion to dismiss, an answer not denying the foregoing facts, and a stipulation that "as the issues presented by the bill of complaint and answer filed thereto are questions of law, and the facts are before the court as set forth in the bill of complaint, answer, and this stipulation that it is unnecessary to take proofs in said cause, the aforesaid questions of law being controlling and decisive, that the case proceed to a final decree without taking of proofs, and that the taking of proofs herein be dispensed with; and that the whiskey in controversy was and is intended for consumption as beverage whiskey but the plaintiff does not admit the materiality of the manner of the use thereof."

As already indicated, the ultimate question presented for decision is whether the national prohibition act properly construed, forbids

the transportation of intoxicating liquor from Canada to a foreign country by transshipment in bond, through the United States 35 under regulations pursuant to the treaty and statute already quoted. The solution of this question involves, and depends upon, the proper interpretation of said national prohibition act, popularly known as the "Volstead Act." This statute was, of course, passed for the purpose of enforcing the eighteenth amendment, which provides as follows:

Does this section of the statute forbid the making of the transhipment in question? It is clear enough and is, I understand, conceded by plaintiff, that under a strict construction of the language just quoted from such statute, the latter is sufficiently broad in its terms to prohibit the shipments under consideration since it is undoubtedly necessary, in order to make such shipments, to both "possess" and "transport" intoxicating liquor within the United States. It is likewise probably true, as is apparently also conceded, that this statute, even thus strictly construed, would be a valid exercise of the power, expressly conferred on Congress by the eighteenth amendment, to enforce such amendment by "appropriate legislation."

It is, however, equally certain that in attempting to interpret the meaning of this statute the words used must be read in the light of the mischief aimed at, and of the purpose sought to be accomplished by its enactment. The primary factor in determining the proper construction of such statute must be a consideration of the design and intention of Congress in enacting it, and if such intention can be ascertained, that, and not the literal import of the language employed, must control. It must be borne in mind that not only may the same words have different meanings in different connections, but also that "a thing may be within the letter of a statute and yet not within the statute because not within its spirit nor within the intention of its makers." *Holy Trinity Church v. United States*, 143 U. S. 457, 36 L. Ed. 226; *Lau v. United States*, 144 U. S. 47, 36 L. Ed. 340; *Taylor v. United States*, 207 U. S. 120, 52 L. Ed. 130; *American Security & Trust Company v. District of Columbia*, 224 U. S. 491, 56 L. Ed. 856; *Street v. Lincoln Safe Deposit Company*, 254, U. S. 88, 65 L. Ed. 7; 41 Supreme Court Reporter, 31 (advance sheets).

It will be noted that the language of the eighteenth amendment, already quoted, applies and limits the prohibitory terms thereof to intoxicating liquors intended for "beverage purposes"; and that Congress, by section 3 of title 2 of the Volstead Act, expressed its intention that such act should be construed "to the end that the use of intoxicating liquor as a beverage may be prevented." In view of these references to the object of this legislation, and of the common knowledge of the territorial limitations upon the scope and effect of congressional action, it can not be doubted that the purpose underlying the enactment of this statute was the prevention of the use of intoxicating liquor as a beverage within the United 37 States and the territory subject to the jurisdiction thereof.

Street v. Lincoln Safe Deposit Company, *supra*. This purpose, then, must be carefully kept in mind in seeking to arrive at a correct interpretation of the language employed.

It is another established and recognized principle of statutory construction that repeals by implication are not favored, and that a later statute will not be held to have impliedly repealed an earlier one unless full effect can not be reasonably given to both. *United States v. Lee Yen Tai*, 185 U. S. 213, 46 L. Ed. 878; *Ex parte Webb*, 225 U. S. 663, 56 L. Ed. 1248; *Washington v. Miller*, 235 U. S. 422, 59 L. Ed. 295.

It is equally well settled that a treaty between the United States and a foreign country will not be regarded as abrogated, and rights created thereby taken away, by a subsequent statute, by implication, unless an intention to that effect is clearly and unequivocally indicated by the necessary operation of such statute, it being presumed until the contrary is plainly manifest that Congress intends no interference with such treaty rights; and it is only where the provisions of a treaty and the terms of a later statute are in irreconcilable conflict and can not both remain in force, that the former will be considered as impliedly repealed by the latter. *Chow Heong v. United States*, 112 U. S. 536, 28 L. Ed. 770; *Frost v. Wenie*, 157 U. S. 46, 39 L. Ed. 614; *U. S. v. Gue Lim*, 176 U. S. 459, 44 L. Ed. 544.

It is necessary to consider a contention presented, but apparently not very earnestly pressed, by the Government, that the provision of the treaty here involved, article 29, ceased to be operative prior to the passage of the national prohibition act. As already noted in

the extract therefrom previously quoted, the said article was, 38 by its terms, to remain in force "for the term of years men-

tion in article 33 of this treaty." Article 33 does not mention article 29, but provides that certain other specified articles of the treaty, relating to fisheries, "shall remain in force for the period of ten years from the date at which they may come into operation and, further, until the expiration of two years after either of the high contracting parties shall have given notice to the other of its wish to terminate the same." It is argued in this connection that as these articles specified in article 33 have been long since abrogated, in accordance with the provisions of the treaty, therefore the "term of years mentioned in article 33," during which article 29 was to continue in force, has terminated. With this contention I can not agree. I am satisfied that the reference in article 29 to article 33 was prompted by a desire to adopt, for article 29, the same period of life as that "mentioned in article 33," without an unnecessary repetition, in article 29, of the somewhat cumbrous provisions of article 33. When the articles thus specified in article 33 were subsequently terminated, no mention was made of article 29. The latter has never been expressly abrogated; has been treated as in force, and acted upon, by the executive officials of both Canada and of the United States for more than fifty years; and is, in my opinion, still in effect.

Bearing in mind, then, the canons of construction referred to, and applicable to an inquiry into the meaning and effect of the national prohibition act with respect to the matter in controversy, it is to be observed that at the time of the adoption of said act a treaty between this Nation and Great Britain was in effect, granting to the subjects of the latter, including the plaintiff herein, the right to convey 39 goods, wares, or merchandise in transit from Canada through the territory of the United States in transit to other countries, subject only to the rules and regulations therein referred to. There was also at that time in force a Federal statute, obviously enacted in furtherance of the object of said treaty, such statute providing that "all merchandise arriving at any port of the United States destined for any foreign country, may be entered at the customhouse, and conveyed, in transit, through the territory of the United States, without the payment of duties, under such regulations as to examination and transportation as the Secretary of the Treasury may prescribe." Knowing, as it must of course be held to have known, of the existence and terms of this treaty and statute, Congress enacted legislation containing prohibitory provision couched in broad and general terms, but clearly designed to prevent the use of intoxicating liquor for beverage purposes within the United States and the territory subject thereto. Congress, of course, had no right or power to forbid any use or disposition of intoxicating liquor outside of such territory, and there is no reason for the assumption or room for the inference that it entertained any such intention. *United States v. Palmer*, 3 Wheaton 610, 4 L. Ed. 410. What warrant, then, is there for ascribing to Congress a purpose (not expressed by that body, as it would have been easy and, if intended, natural to have done) to prohibit the shipping of liquor not intended for, or capable of, use for beverage or any other purpose in the United States, and transported, not into, but through, the United States. (*United States v. Gudger*, 249 U. S. 373, 63 L. Ed. 653; *McLean v.*

*Hager*, 31 Fed. 602) in accordance with a treaty then in existence and not expressly abrogated or otherwise mentioned in 40 the statute which is claimed to have indicated such a purpose. I am unable to find in the language of the statute, read and considered in the light of all the surrounding circumstances, the clear evidence of such a purpose which should appear in order to justify such a construction. I am of the opinion that the national prohibition act does not indicate any intention to forbid the conveyance of intoxicating liquors in transit in bond from Canada through the United States to foreign countries under the provisions of the treaty and statute authorizing such conveyance, and pursuant to proper rules and regulations by the executive officials having charge thereof.

It is urged by the Government that the prohibition in the statute against the exportation of intoxicating liquor from the United States negatives an intention to confine its application to the use of such liquor within the United States. This argument overlooks the close

relation between manufacture and exportation and the incentive to engage in the former which is furnished by the right to engage in the latter; and it was doubtless considered, and not without reason, that to forbid the exportation of intoxicating liquor from, would tend to make easier the enforcement of the prohibition against its manufacture and possession in, the United States. It can not, however, be said that such a relation exists between the transshipments in question and the prevention of the use of intoxicating liquor as a beverage within the United States. To hold otherwise would be in effect to ignore the efficacy and effect of the protection afforded such transhipment by the United States customs officers and other officials under whose supervision they are conveyed in transit through the United States. It was evidently the belief of Congress, 41 in providing for such conveyance, that goods under such supervision could be safely left to proceed without interruption through this country to their destination beyond its borders, and that they could therefore be legitimately exempted from the payment of the customs charges to which they would otherwise be subject. In view of the presumption in favor of the performance by public officers of the duties imposed upon them, and giving to the operation of the customs rules and regulations the same consideration and weight apparently accorded by Congress, I conclude that conveyances of intoxicating liquor in transit under the rules and regulations applicable and in control of the proper officials were not regarded by Congress as falling within the scope of the evils sought to be remedied by the national prohibition act, or as having such a substantial relation thereto as to call for their inclusion among the acts forbidden by that statute.

Finally, it is argued that because section 20 of title 3 of the statute, applicable solely to the Canal Zone, expressly provides "that this section shall not apply to liquor in transit through the Panama Canal or on the Panama Railroad," therefore the absence of such an express provision from the portions of the statute not relating to the Canal Zone indicates a purpose to make those portions of the act applicable to liquor in transit. This contention can not be sustained. Its lack of merit is made apparent not only by the observation that it is merely from the operation of "this section" that the liquor in transit referred to is exempted, but also by a consideration of the fact that the absence of any applicable treaty furnishes a probable, if not necessary, reason, for an express exemption from the operation of section 20, of "in transit" shipments of liquor through the Canal Zone,

42 whereas there was no necessity or occasion for such an express exemption with respect to "in transit" conveyances from Canada through the United States, the latter being protected by treaty provisions not repealed by the national prohibition act.

The arguments advanced by the Government rests, in the last analysis, upon the ultimate contention that to "transport" or "possess" intoxicating liquor, except as expressly authorized by the Volstead Act, is forbidden by that act. It has, however, already

been distinctly held by the Supreme Court that these words are not to be so interpreted but that a transportation, or possession, of intoxicating liquor necessarily connected with, and incidental to, an act not within the prohibition, because not within the spirit and true meaning, of the statute, is not a violation thereof. *Street v. Lincoln Safe Deposit Company, supra.*

For the reasons and from the conclusions thus expressed, it necessarily results that the injunction prayed should be granted, and an order will be entered in conformity with the terms of this opinion.

ARTHUR J. TUTTLE,  
*District Judge.*

Dated, Detroit, Michigan, August 23rd, 1921.

Filed August 23, 1921.

ELMER W. VOORHEIS, *Clerk,*  
By CARRIE DAVISON, *Deputy Clerk.*

43 United States of America, in the District Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

HIRAM WALKER & SONS, LTD., PLAINTIFF,  
*vs.*

RICHARD I. LAWSON, COLLECTOR OF CUSTOMS FOR THE PORT of Detroit, and John A. Grogan, collector of internal revenue, in said city of Detroit, Michigan, defendants. } No. 411.

*Decree.*

At a session of said court held at Detroit, Michigan, in said district, on the 23rd day of August, 1921.

Present: Hon Arthur J. Tuttle, United States district judge.

This cause came on to be heard at this term and was argued by counsel, and decreed as follows, viz:

(1st) That the allegations of material facts contained in the bill of complaint are true.

(2nd) That the said defendants, Richard I. Lawson, and John A. Grogan, their respective agents, servants, and employees and all claiming or holding through or under them, or any or either of them, and all other officials, agents and employees of the Treasury Department of the United States, and each and every one of them, be and they are hereby, restrained permanently from interfering with the possession of the shipment of 25 cases of whiskey presented

by the said plaintiff, Hiram Walker & Sons, Ltd., on February 44 14, 1921, to the agents of the said defendant Richard I. Lawson, at the port of Detroit, State of Michigan, to be conveyed in transit in bond through the United States to the country of

Mexico, via the port of New Orleans, each of said twenty-five cases, numbered 1 to 25, respectively, being marked as follows:

"A. T. M. Port of Detroit.

Mexico.

Vera Cruz. In bond for New Orleans,"

and that said defendants, officials, agents, servants, and employees, and each of them be, and they are hereby, further restrained permanently from interfering, directly or indirectly, with the conveyance of the aforesaid merchandise in bond to the country of Mexico as aforesaid. And further, that in the event the said plaintiff for any reason desires the return of said whiskey to it at Walkerville, in the Province of Ontario, Dominion of Canada, then that the aforesaid parties, and each and every one of them, be and they are hereby restrained from interfering with the delivery of said merchandise to the plaintiff and the return thereof to the plaintiff at said city of Walkerville, for such disposition thereof as may be lawful and not contrary to the rights of the plaintiff in said whiskey.

(3d) That the defendants, Richard I. Lawson and John A. Grogan, their respective agents, servants, and employees and all claiming or holding through or under them, or any or either of them, and all other officials, agents, and employees of the Treasury Department of the United States, and each and every one of them, be and they are hereby enjoined and restrained permanently from enforcing or attempting to enforce, or causing to be enforced against the plaintiff, its officers, servants, and employees, or any of them, and against the

whiskey of the said plaintiff, any of the pains, penalties, or 45 forfeitures provided in and by the national prohibition act

also known as the Volstead Act), or the regulations of the Secretary of the Treasury supplemental thereto, on the grounds of or under the claims that conveying whiskey in bond through the United States, shipped from and destined to foreign countries, under the provisions of section 3005 of the Revised Statutes of the United States and the amendments thereto, and the regulations thereunder, is contrary to law, and that said defendant John A. Grogan, his agents, servants, employees, and subordinates and each and every one of them, and all other officials, agents, and employees of the Treasury Department of the United States, and each and every one of them, be and they are hereby enjoined and restrained permanently from arresting or prosecuting the plaintiff, its officers, agents, servants, or employees, or any of them for or on account of any alleged violation by them or any of them of the terms of the said national prohibition act or the regulations of the United States Secretary of the Treasury promulgated thereunder on the grounds of or under the claims that conveying whiskey in bond through the United States, shipped from and destined to foreign countries, under the provisions of section 3005 of the Revised Statutes of the United States, and the amendments thereto, and the regulations thereunder, is contrary to law.

(4th) That the said defendants, Richard I. Lawson and John A. Grogan, their respective agents, servants, and employees, and all

claiming or holding through or under them, or any or either of them, and all other officials, agents, and employees of the Treasury Department of the United States, and each and every one of them, be and they are hereby enjoined and restrained permanently  
 46 from forfeiting, seizing, stopping, hindering, molesting, or interfering with shipments of whiskey made by plaintiff, from Walkerville, Ontario, or elsewhere, in the Dominion of Canada, destined for any foreign country, and entering any port in the United States for conveyance thence in transit in bond through the United States to any other port therein for transshipment at the latter port and conveyance thence to any foreign country where the conveyance of said whiskey through the United States is to be made, as provided for in and according to section 3005 of the Revised Statutes of the United States, as amended, and the regulations thereunder.

ARTHUR J. TUTTLE,  
*United States District Judge.*

Filed, August 23, 1921.

ELMER W. VOORHEIS, *Clerk,*  
 By CARRIE DAVISON, *Deputy Clerk.*

47 United States of America, in the District Court of the United States for the Eastern District of Michigan, Southern Division.

In Equity.

HIRAM WALKER & SONS, LTD., PLAINTIFF,  
*vs.*

JOHN A. GROGAN, COLLECTOR OF INTERNAL REVENUE for the first district of Michigan, and  
 Richard I. Lawson, collector of customs for the first district of Michigan, defendants.

No. 411.

*Assignments of error.*

And now come the above-named defendants, by John E. Kinane, United States attorney for the Eastern District of Michigan, and say that the District Court who rendered the final decree in the above entitled cause erred in the following particulars, to wit:

I.

The court erred in holding that the national prohibition act does not forbid the transportation of intoxicating liquor intended for beverage purposes from Canada to a foreign country, by transshipment, in bond, through the United States.

II.

The court erred in holding that the treaty between Great Britain and the United States proclaimed July 4, 1871, was not abrogated

by the adoption of the eighteenth amendment to the Constitution of the United States and the passage of the national prohibition act so far as said treaty relates to intoxicating liquors for beverage purposes.

## III.

The court erred in holding that the treaty between Great Britain and the United States proclaimed on July 4, 1871, was not abrogated and terminated by the executive branch of the United States prior to the adoption of the eighteenth amendment to the Constitution of the United States and the passage of the national prohibition act, so far as said treaty relates to the transshipment of merchandise from the British possessions to foreign countries and through the United States.

## IV.

The court erred in holding that section 3005 of the Revised Statutes of the United States was not repealed by the national prohibition act so far as said section pertains to intoxicating liquor for beverage purposes.

## V.

The court erred in holding that the national prohibition act and the regulations lawfully promulgated thereunder permit the transportation of intoxicating liquor from Canada to a foreign country, by transshipment in bond, through the United States, under regulations pursuant to the treaty aforesaid and section 3005 Revised Statutes of the United States.

## VI.

The court erred in holding that the regulations promulgated and adopted under section 3005, Revised Statutes of the United States, 49 permit the transportation of intoxicating liquor intended for beverage purposes from Canada to Mexico, by transshipment in bond, through the United States.

JOHN E. KINNANE,

*United States Attorney, Eastern District of Michigan.*

FRED L. EATON,

*Assistant U. S. Attorney.*

We acknowledge timely service of the foregoing assignments of error.

LUCKING, HELFMAN, LUCKING & HANLON,  
*Attorneys for Plaintiff.*

Filed August 24th, 1921.

ELMER W. VOORHEIS, *Clerk,*  
By CARRIE DAVISON, *Deputy Clerk.*

50      United States of America, in the District Court of the United States for the Eastern District of Michigan, Southern Division.

In Equity.

HIRAM WALKER & SONS, LTD., PLAINTIFF,  
vs.

JOHN A. GROGAN, COLLECTOR OF INTERNAL  
revenue for the first district of Michigan  
and Richard L. Lawson, collector of cus-  
toms for the first district of Michigan,  
defendants.

No. 411.

*Additional assignments of error.*

Said court erred in holding that the treaty between Great Britain and the United States, proclaimed July 4, 1871, was not abrogated and modified by the adoption of the 18th amendment to the Constitution of the United States and the passage of the national prohibition act, commonly called the Volstead Act, thereunder, so far as said treaty established the right to transport by shipment through the United States, to foreign countries, merchandise which consisted of intoxicating liquors intended for beverage purposes, in bond, thereby holding and deciding that the right of such shipment through the United States to foreign countries, in bond, was not terminated and taken away by said constitutional amendment and said national prohibition act, or either of them.

IX.

51      The court erred in holding and deciding that said constitutional amendment and said national prohibition act should be construed as not conflicting with or interfering with the right of transshipment of merchandise which consisted of intoxicating liquor for beverage purposes, through the United States, which existed prior to the adoption of said act and said constitutional amendment, under the aforesaid treaty between the United States and Great Britain.

X.

The court erred in holding and deciding that the right of transshipment of merchandise from Canada through the United States to foreign countries, which existed under the treaty aforesaid, was not terminated and taken away by the adoption of the aforesaid constitutional amendment and the national prohibition act.

XI.

The court erred in permanently restraining the above named defendants, their agents and servants, and all officers, agents and

servants of the Treasury Department of the United States, from preventing or interfering with any shipments of intoxicating liquor intended for beverage purposes by said plaintiff, through the United States, intended for any foreign country or port; and also from interfering with or preventing the return by like shipment of any part of said intoxicating liquor.

JOHN E. KINNANE,

*United States Attorney,*

*Eastern District of Michigan, for Defendants.*

52 It is hereby stipulated and agreed by and between the parties to the above-entitled cause, by their respective attorneys, that the above assignments of error, Nos. VIII to XI, may be filed in said cause which is appealed to the United States Supreme Court, without prejudice to said appeal.

LUCKING, HELFMAN, LUCKING & HANLON,  
*Attorneys for Plaintiff.*

JOHN E. KINNANE,

*United States Attorney,*

*Eastern District of Michigan, for Defendants.*

ELMER W. VOORHEIS, *Clerk.*

Filed Sept. 12, 1921.

53 United States of America, in the District Court of the United States for the Eastern District of Michigan, Southern Division.

In Equity.

HIRAM WALKER & SONS, LTD., A CORPORATION ORGANIZED  
and existing under and by virtue of the laws of the  
Dominion of Canada, plaintiff,

*vs.*

JOHN A. GROGAN, COLLECTOR OF INTERNAL REVENUE FOR  
the first district of Michigan, and Richard I. Lawson,  
collector of customs for the Eastern District of Michigan, defendants.

No. 411.

*Claim of appeal and order allowing same.*

John A. Grogan, collector of internal revenue for the first district of Michigan, and Richard I. Lawson, collector of customs for the eastern district of Michigan, defendants in the above-entitled cause, conceiving themselves aggrieved by the final decree entered on the 23d day of August, A. D. 1921, in the above entitled cause, do hereby appeal from said decree to the Supreme Court of the United States, and they pray, that this, their appeal, may be allowed, and that the transcript of the record, together with the assignments of error and proceedings and papers upon which the said decree was

made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 24th day of August, in the year of our Lord one thousand nine hundred and twenty-one.

JOHN E. KINNANE,  
*United States Attorney,*

*Eastern District of Michigan, for defendants.*

54 Now, on to wit, this 24th day of August, in the year of our

Lord one thousand nine hundred and twenty-one, it is ordered  
that the appeal in the above-entitled cause be and the same is allowed  
as prayed for, and that the defendants be not required to file any  
bond on such appeal, they being public officials.

ARTHUR J. TUTTLE,  
*United States District Judge.*

Filed August 24, 1921.

ELMER W. VOORHEIS, *Clerk.*  
By CARRIE DAVISON, *Deputy.*

55 Supreme Court of the United States.

UNITED STATES OF AMERICA,

*Sixth Judicial Circuit, ss:*

To Hiram Walker & Sons, Ltd., a corporation organized and existing under the laws of the Dominion of Canada, greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be helden at the city of Washington, D. C., on the 23rd day of September next pursuant to an appeal filed in the clerk's office of the District Court of the United States for the Eastern District of Michigan, wherein John A. Grogan, collector of internal revenue for the 1st district of Michigan, and Richard I. Lawson, collector of customs for the eastern district of Michigan, are appellants and you are appellee to show cause, if any there be, why the decree rendered against the said appellants in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William H. Taft, Chief Justice of the United States, this 24th day of August in the year of our Lord one thousand nine hundred and twenty-one, and of the Independence of the United States of America the one hundred and forty-sixth.

ARTHUR J. TUTTLE,  
*United States District Judge for the*  
*Eastern District of Michigan.*

Due and timely service of the within citation is hereby accepted

LUCKING, HELFMAN, LUCKING & HANLON,  
*Solicitors for Appellee.*

56 United States of America, in the District Court of the United States for the Eastern District of Michigan, Southern Division.

In Equity.

HIRAM WALKER & SONS, LTD., PLAINTIFF.

*v.s.*

JOHN A. GROGAN, COLLECTOR OF INTERNAL  
revenue for the first district of Michigan,  
and Richard I. Lawson, collector of cus-  
toms for the eastern district of Michigan,  
defendants.

No. 411.

*Designation of record.*

And now come the above-named defendants, by John E. Kinnane,  
United States attorney for the eastern district of Michigan, and designates the following papers as those which shall constitute the record on appeal in the above entitled cause:

1. Bill of complaint.
2. Order to show cause and temporary restraining order.
3. Return to order to show cause and motion to dismiss.
4. Order continuing temporary restraining order to August 26, 1921.
5. Answer of defendants.
6. Stipulation by counsel waiving proofs.
7. Memorandum of opinion on final decree.
8. Final decree.
9. Assignments of error.
10. Claim of appeal, by defendants.
- 57 11. Order allowing appeal.
12. Citation.

J. E. KINNANE;

United States Attorney,

Eastern District of Michigan, for Defendants.

F. L. EATON,

Assistant, U. S. Attorney.

Detroit, Michigan, August 26, 1921.

We acknowledge timely service of the foregoing designation of record.

LUCKING, HELFMAN, LUCKING & HANLON,  
Attorneys for Plaintiff.

Filed August 26th, 1921.

ELMER W. VOORHEIS, Clerk.  
CARRIE DAVISON, Deputy Clerk.

58 At a session of the District Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment at the District Court room in the city of Detroit, in said district, on the Friday the twenty-third day of September in the year of our Lord one thousand nine hundred and twenty-one.

Present: The Honorable Arthur J. Tuttle, United States district judge.

HIRAM WALKER & SONS, LTD.,  
vs.  
RICHARD I. LAWSON and JOHN A. GROGAN. } No. 411.

Upon the application of the clerk of this court, for cause shown, it is by the court now here ordered that the time in which to file and docket printed record on appeal in this cause, be and the same is hereby extended to and including the 23rd day of November, A. D. 1921.

ARTHUR J. TUTTLE,  
*United States District Judge.*

(Endorsement:) No. 411. United States District Court, Eastern District of Michigan, Southern Division. Hiram Walker & Sons, Ltd., vs. Richard I. Lawson and John A. Grogan. Order extending time to file and docket printed record of appeal to Nov. 23, 1921. Filed Sept. 23rd, 1921. Elmer W. Voorheis, clerk, Lew W. Levinson, deputy clerk.

59 United States of America, in the District Court of the United States for the Eastern District of Michigan.

HIRAM WALKER & SONS, LTD., PLAINTIFF,  
vs.

JOHN A. GROGAN, COLLECTOR OF INTERNAL  
revenue for the first district of Michigan,  
and Richard I. Lawson, collector of cus-  
toms for the first district of Michigan, de-  
fendants.

} No. 411. In Equity.

EASTERN DISTRICT OF MICHIGAN.  
*Southern Division, ss:*

I, Elmer W. Voorheis, clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify and return to claim of appeal of John A. Grogan, collector of internal revenue for the first district of Michigan, and Richard I. Lawson, collector of customs for the first district of Michigan, in the above entitled cause, that the attached and foregoing is a true copy of the record and proceedings in said cause as the same appears of record and on file in my office; that I have compared the same with the originals, and it is a true and correct transcript therefrom and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Detroit, in said district, this third day of November, in the year of our Lord one thousand nine hundred and twenty-one, and of the Independence of the United States of America the one hundred and forty-sixth.

[SEAL.]

ELMER W. VOORHEIS,  
*Clerk United States District Court,  
Eastern District of Michigan.*

60 (Indorsement:) In the Supreme Court of the United States. John A. Grogan, collector of internal revenue for the first district of Michigan, and Richard I. Lawson, collector of customs for the first district of Michigan, appellants, vs. Hiram Walker & Sons, Ltd., appellee. Return of clerk of the District Court of the United States for the Eastern District of Michigan to claim of appeal of appellants, in the above-entitled cause.

(Indorsed on cover:) File No. 28570. E. Michigan D. C. U. S. Term No. 615. John A. Grogan, collector of internal revenue for the First District of Michigan, et al., appellants, vs. Hiram Walker & Sons, Ltd. Filed November 9th, 1921. File No. 28570.

